

Forensic Accountants - The Benefits of Early Engagement

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Forensic accountants focus on the reconstruction and independent evaluation of economic issues. These professionals can help shape the scope and direction of investigations and enhance the potential for a successful settlement or trial result. Cost is often the primary reason attorneys may delay initiating a financial assessment or damages evaluation. However, a different skill set and level of understanding, which may be beyond that of the attorney, is often needed to interpret an opposing expert's findings or detect errors or erroneous assumptions in written discovery. Delay in retaining a forensic accountant may adversely impact case outcome. Some examples:

A Mistake Derails Negotiations

Shortly before mediation, defense counsel retained a forensic accountant to address the significant business interruption (BI) component of a complex claim. In discussing accounting conventions and principles at mediation, the accountants were in agreement regarding historical activity and calculation methodology, but their views differed dramatically on the compensability of payroll, specifically non-exempt payroll.

Defendant's forensic accountant noted that coverage for non-exempt payroll was specifically excluded under the policy. He suggested, therefore, that amounts included in the opposing expert's BI calculation for non-exempt payroll be removed. The resulting exchange ended with the emotional retort "What did you expect us to do, lay them all off?" effectively complicating further negotiations.

A reasonably cooperative atmosphere was irrevocably soured because of an issue that would have been detected and eliminated had the forensic accountant been included early as part of the defense team. Inflated expectations, based neither on coverage nor facts, can impact or derail the best negotiations when wrongfully included claims are left unchallenged.

Successful Course Correction

A forensic accountant, retained by a bond holder and its insurer, was called upon just two weeks before trial to evaluate allegedly fraudulent expenditures in connection with the recovery of funds paid pursuant to a Surety Bond. Upon hearing the testimony of defendant's witness, the forensic accountant concluded that exhibits other than those suggested by counsel were required to demonstrate that defendant's allegations were unsupported by the facts.

Over the weekend, the forensic accountant improvised a strategy and crafted exhibits to rebut the testimony using data from defendant's personal and corporate records. The exhibits and testimony clearly demonstrated that events as suggested during preceding testimony could not have occurred.

This mid-course correction resulted in full recovery for the insurer and a considerable recovery for the bond holder. Had the forensic accountant not been involved, the case would have been decided based on erroneous opinion and recollection of prior events and conversations. When faced with the need to account, measure or compile data, counsel should strongly consider engaging a forensic accountant early so that strategy can be fully explored and alternatives considered.

Engaging a forensic accountant early in cases involving complex economic issues can lead to success. The attorney and forensic accountant can partner to efficiently and effectively tackle a case on all fronts. The forensic accountant can provide detailed and effective lines of cross-examination for depositions while assisting the attorney with interpreting and understanding an opposing expert's report and opinions, thus strengthening defense counsel's position both in settlement negotiations and at trial.

Established in 1988, Alan Gray, Inc. is an international insurance and financial services firm headquartered in Boston, MA that provides consulting, operational and business processing services.